



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1995

Ms. Eugenia A. Cano
City Attorney
Office of the City Attorney
City of Alvin
216 West Sealy
Alvin, Texas 77511

OR95-1386

Dear Ms. Cano:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 36177.

The City of Alvin (the "city") received an open records request for copies of the statements that the requestor made during the city's ongoing internal investigation into a complaint of sexual harassment. These statements were given to the city manager and city attorney in connection with allegations of sexual harassment. You have submitted for our review four statements made by the requestor. You contend that the information requested is excepted from required public disclosure under 552.108. Also, you have marked portions of the statements that you contend are protected by common-law privacy and are excepted from required disclosure pursuant to section 552.101 of the Government Code.¹

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law privacy doctrine. Information may be withheld under common-law privacy if it meets the criteria the Supreme Court of Texas articulated for section 552.101 in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public.

¹In your letter to this office you state that after receiving the request, you had a telephone conversation with the requestor during which, as you explain, he limited his request by stating that he was only seeking copies of statements that he made rather than copies of all of the statements made during the investigation. Since you did not submit other statements to this office for review, our ruling only addresses the statements that were made by the requestor.

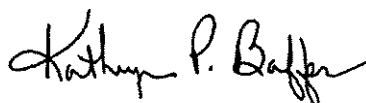
The names of witnesses and their detailed affidavits regarding allegations of sexual harassment is the kind of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation. Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). The *Ellen* court held that "the public d[oes] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Section 552.023 of the Government Code provides that individuals in some circumstances may have a special right of access to certain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests. We conclude that this requestor has a special right of access to copies of his statements. Gov't Code § 552.023. While generally this office does not consider who is requesting information, in this instance, a release to this requestor would not be a release to the public. See Gov't Code § 552.223. You must release copies of the submitted statements to the requestor. Should a different requestor seek the information requested here, the city must resubmit a request for a ruling to this office.

You also state that, since the investigation is ongoing, you "also invoke the investigative exception." We assume that you are contending that section 552.108 excepts the requestors statements from required public disclosure. The governmental body bears the burden of establishing why and how an exception applies to requested information. Open Records Decision No. 542 (1990). If a governmental body does not establish how and why an exception applies to requested information, there is no basis upon which to pronounce it protected. Open Records Decision No. 363 (1983). We conclude that you have not established how and why section 552.108 applies to the information requested. Consequently, you may not withhold any of the information submitted for our review pursuant to section 552.108.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/ch

Ref: ID# 36177

Enclosures: Submitted documents

cc: Mr. Ramiro Ramos
811 S. Hill
Alvin, Texas 77511
(w/o enclosures)